

ORIGINAL

NEW APPLICATION



0000136731

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

2012 MAY -8 P 4 30

DOCKETED

MAY -8 2012

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

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GARY PIERCE
Chairman
PAUL NEWMAN
Commissioner
SANDRA D. KENNEDY
Commissioner
BOB STUMP
Commissioner
BRENDA BURNS
Commissioner

IN THE MATTER OF THE AGREEMENT
BETWEEN GRANITE
TELECOMMUNICATIONS, LLC AND
QWEST CORPORATION FOR THE
PROVISION OF QWEST LOCAL
SERVICES PLATFORM

DOCKET NOS. T-01051B-12-0169
T-04208A-12-0169

COMPLIANCE FILING OF
AMENDMENT UNDER PROTEST
AND WITH RESERVATION OF
RIGHTS

Pursuant to 47 U.S.C. § 252 (e)(1), the Rules of the Arizona Corporation Commission ("Commission") regarding filing of interconnection agreements and amendments to interconnection agreements, Qwest Corporation dba CenturyLink QC ("Qwest") files the attached Amendment to Qwest Local Services Platform Agreement 2012 ("QLSP-2012") Service entered into between Qwest Corporation and Granite Telecommunications, LLC, for approval by the Commission. This Attached Amendment is effective as of March 9, 2012. The attached Amendment shall be referred to as the "Amendment to Commercial QLSP-2012 Agreement." As explained below, Qwest objects to being required to file the Amendment to Commercial QLSP-2012 Agreement for approval and likewise takes the position that the Commission lacks the authority to review, approve, amend, or reject the Amendment to Commercial QLSP-2012 Agreement, in whole or in part. Qwest is therefore filing the attached Amendment to Commercial QLSP-2012 Agreement under protest and with a reservation of rights as explained below.

Qwest's filing of the Amendment to Commercial QLSP-2012 Agreement under protest is the result of the order entered by the Commission on September 9, 2005 in Docket Nos. T-

1 01051B-04-0540 and T-03574A-04-0540 (the "MCI Filing Order"). In that order, the
2 Commission denied Qwest's Motion to Dismiss the Agreement Filing of MCImetro Access
3 Transmission Services, L.L.C. ("MCI"). In the MCI Filing Order, the Commission concluded
4 that the Commercial QPP Agreement between Qwest and MCI is subject to the Commission's
5 jurisdiction and that the Telecommunications Act of 1996 ("the Act") required Qwest and
6 MCImetro to file the agreement and seek the Commission's approval of it.

7 The Amendment to Commercial QLSP-2012 Agreement filed by Qwest in this docket,
8 with the exception of the name of the party with whom Qwest is contracting to provide QLSP
9 Service, addresses the same services as those in the Commercial QPP™ Agreement filed by MCI
10 in Docket Nos. T-01051B-04-0540 and T-03574A-04-0540.

11 Pursuant to the Federal Communications Commission's rulings in the *Triennial Review*
12 *Order*¹ and the *Triennial Review Remand Order*,² incumbent local exchange carriers ("ILECs")
13 like Qwest are no longer required to provide mass market switching, shared transport, and certain
14 other services under Section 251 of the Act.³ Notwithstanding these rulings, Qwest has
15 voluntarily determined that it will provide mass market switching and shared transport services
16 under the QLSP-2012 Agreement. In *Qwest Corporation v. Arizona Corporation Commission*
17 (the "*Covad Arbitration Decision*"), the United States District Court for the District of Arizona
18 recently ruled that the Commission does not have the authority to require Qwest to include in its
19 arbitrated interconnection agreements obligations to provide network elements that, per rulings
20 of the Federal Communications Commission, Qwest is not required to provide under
21 Section 251.⁴ This ruling recognizes that while Congress gave state commissions authority to
22 impose and enforce requirements involving the unbundled network elements and services

23 ¹ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report
24 and Order, 17 FCC Rcd 16978 (2003).

25 ² *In the Matter of Unbundled Access to Network Elements and Review of Section 251 Unbundling Obligations*,
Order on Remand, 20 FCC Rcd 2533 (2005).

26 ³ 47 U.S.C. §251

⁴ 496 F. Supp.2d 1069, 1077 (D. Ariz. 2007), *affirmed*, *Qwest Corporation v. Arizona Corporation Commission*,
567 F.3d 1109 (9th C.A. 2009).

1 included in Section 251, it specifically did not grant state authority over the elements and
2 services that the FCC has removed from Section 251.⁵ Thus, the Amendment to QLSP-2012
3 Agreement, which does not include any services required under Section 251, is not subject to
4 review by this Commission. Further, that decision is consistent with those of multiple other
5 federal courts that have ruled that states do not have authority under the Act to impose
6 requirements on services and elements that the FCC has removed from Section 251.⁶

7 Therefore, subject to the foregoing, Qwest hereby files the attached Amendment to
8 Commercial QLSP-2012 Agreement under protest and, likewise under protest, seeks the
9 Commission's approval of the Amendment under Section 252(e)(1) of the Act.

10 RESPECTFULLY SUBMITTED this 8th day of May, 2012.

11 **QWEST CORPORATION dba**
12 **CENTURYLINK QC**

13
14 By: 

15 Norman G. Curtright
16 Associate General Counsel, Qwest
17 20 E. Thomas Rd., 1st Floor
18 Phoenix, Arizona 85012

19 Attorney for Qwest Corporation

20 ⁵ *Id.* at 1076-78.

21 ⁶ See e.g. *Verizon New England v. Maine Public Utilities Comm'n, et al.*, Nos. 06-2151, 06-2429, 2007 WL 2509863
22 (1st Cir. Sept. 6, 2007); *DIECA Communications, Inc. v. Florida Public Services Comm'n et al.*, 447 F. Supp. 2d
1281 (N.D. Fla. 2006); *Bellsouth Telecommunications, Inc. v. Kentucky Public Service Comm'n, et al.*, No. 06-65-
KKC, 2007 WL 2736544 (E.D. Ky. Sept. 18, 2007); *Michigan Bell Tel. Co. v. Lark, et al.*, No. 06-11982, 2007 WL
2868633 (E.D. Mich. Sept. 26, 2007); *Southwestern Bell Tel., L.P. v. Missouri Public Service Comm'n*, 461 F. Supp.
2d 1055 (E.D. Mo. 2006).

23 In *Qwest Corp. v. Public Utilities Commission of Colorado*, 479 F.3d 1184 (10th Cir. 2007), the 10th Circuit ruled
24 that the Colorado and Utah Commissions had authority to review and approve a Qwest commercial agreement
25 known as "Qwest Platform Plus" under Section 252(e)(1). However, Qwest submits that the decision is incorrect
26 because it concludes erroneously that the commercial agreement at issue in that case related to the duties in Section
251(b) and (c) involving unbundled network elements and interconnection. The mass market switching and shared
transport that Qwest provides under the agreement at issue here is not provided pursuant to either Section 251(b) or
(c) and therefore does not relate to any of the duties in that section. As such, the agreement is not an
"interconnection agreement" subject to this Commission's review and approval under Section 252(e)(1).

1
2 **ORIGINAL** and 13 copies of the foregoing
filed this 8th day of May, 2012 with:

3 Docket Control
4 Arizona Corporation Commission
1200 West Washington Street
5 Phoenix, AZ 85007

6 **COPY** of the foregoing mailed
this same day to:

7 Rand Currier
8 Granite Telecommunications, LLC
100 Newport Avenue, Extension
9 Quincy, MA 02171

10 By: 
11 Reed Peterson

**AMENDMENT TO
QWEST LOCAL SERVICES PLATFORM™ ("QLSP™") AGREEMENT**

This amendment ("Amendment"), by and between **Qwest Corporation dba CenturyLink QC ("CenturyLink")**, a Colorado corporation, and **Granite Telecommunications, LLC ("CLEC")**, a Delaware limited liability company, amends the QWEST™ Local Services Platform ("QLSP™") Agreement between the Parties.

WHEREAS, the Parties entered into a QWEST™ Local Services Platform ("QLSP™") Agreement (now referred to as a CenturyLink™ Local Services Platform ("CLSP™") Agreement) (the "Agreement") with an Effective Date of May 6, 2008; and

WHEREAS, the Parties agree to amend the Agreement under the terms and conditions contained herein.

NOW THEREFORE, in consideration of the foregoing and the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Amendment Terms

Attachment 2-QLSP® Volume Commitment Plan Service Description to the Agreement is hereby amended by the addition of the following Section 3.3.6 at the end of **Section 3.0 Rates and Charges**:

"3.3.6 Minimum Volume Growth Requirement Rollover. Beginning with the Measurement Period having a Start Date of 11/1/2011, QLSP Volumes added during any Measurement Period that exceed the corresponding Minimum Volume Growth Requirement set forth in the table in Section 3.3.1 will apply towards the immediately subsequent Minimum Volume Growth Requirement. For the avoidance of doubt, it is expressly understood and agreed by the Parties that any such QLSP Volumes in excess of the corresponding Minimum Volume Growth Requirement will apply only to the immediately subsequent Measurement Period and will not carry forward to any other period.

Example: CLEC has 105,477 lines in service on Oct 31, 2010. CLEC has 116,614 lines in service on Oct 31, 2011. QLSP Volume growth during this Measurement Period equals 11,137 lines, which exceeds the Minimum Volume Growth Requirement by 3,137 lines. As a result, 3,137 lines would be applied towards the Nov 1, 2011 to Oct 31, 2012 Measurement Period Minimum Volume Growth Requirement of 8000 lines."

Effective Date

This Amendment shall be deemed effective upon the latest execution date by the Parties.

Further Amendments

Except as expressly modified by this Amendment, the provisions of the Agreement shall remain unmodified and shall be in full force and effect. The provisions of this Amendment, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Amendment may not be given without the written consent thereto by both of the Parties hereto. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

Entire Agreement

The Agreement as amended (including by the documents referred to herein, if any) constitutes the full and entire understanding and agreement between the Parties with regard to the subject matter of the Agreement, as amended, and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subject matter of the Agreement, as amended.

**AMENDMENT TO
QWEST LOCAL SERVICES PLATFORM™ ("QLSP™") AGREEMENT**

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

Qwest Corporation dba CenturyLink QC: <div style="border: 1px solid black; padding: 2px; text-align: center; margin: 10px auto; width: 150px;">05E9FC68BD57454... <i>L T Christensen</i></div> By: <u>DocuSigned By: L T Christensen</u> Name: <u>L. T. Christensen</u> Title: <u>Director – Wholesale Contracts</u> Date: <u>3/9/2012</u>	Granite Telecommunications, LLC: <div style="border: 1px solid black; padding: 2px; text-align: center; margin: 10px auto; width: 150px;">DocuSigned by: <i>Rand Currier</i> 6ED5CA724AEF42B</div> By: _____ Name: <u>Rand Currier</u> Title: <u>Chief Operating Officer</u> Date: <u>3/8/2012</u>
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